Examination of all of the claims does not present a serious burden.

Applicant respectfully points out that M.P.E.P. § 803 requires: "If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions." In the present case, the Examiner has already examined all of claims 1-6 and opined as to their patentability in the Office Action of July 6, 2004. The amendments made to claim 6 in Applicant's September 16, 2005 Amendment includes limitations speaking to a collar, similar to limitations already present in the other independent claims. Therefore, Applicant respectfully asserts that there is no serious burden on the Examiner to search and examine all of the claims, as he has already searched and examined the claims and their various limitations.

Restriction is improper at this stage of prosecution.

M.P.E.P. § 811 states:

> the examiner should make a proper requirement as early as possible in the prosecution, in the first action if possible, otherwise, as soon as the need for a proper requirement develops. Before making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required. (Emphasis added.)

Hence, Applicant respectfully asserts that since, as discussed above, all of the claims (or at least all of the elements present in the claims as pending) have already been searched and examined on the merits at least once, it would not present a serious burden for the Examiner to issue an action on all of the pending claims.

Further, Applicant respectfully reminds the Examiner that in accordance with 37 CFR § 1.142(a), second sentence, and M.P.E.P. § 811 a restriction requirement "may be made at any time before final action" (emphasis added).

For at least the foregoing reasons Applicant respectfully asserts that it is improper for the Examiner to present this restriction at this late point in the examination of this application, particularly after a final office action and following the filing of an RCE.

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Restriction is advanced under the improper theory.

The restriction requires election between group:

I. Claims 1-5, drawn to a fitting, classified in class 285, subclass 356; and

II. Claim 6, drawn to a method for producing a hydraulic fitting, classified in class 29, subclass 890.014.

The restriction alleges the inventions are distinct, each from the other because the inventions of Group II and Group I are related as apparatus and product made under MPEP § 806.05(g). However, Applicant notes that MPEP § 806.05(g) is directed to restriction between an apparatus and a product made by the apparatus. As noted in the restriction requirement itself claims 1-5 are drawn to a fitting and claim 6 is drawn to a method for producing a hydraulic fitting. While the fittings of claims 1-5 may be viewed as an apparatus or a product, application fails to understand how the method of claim 6 can be viewed as an apparatus or product. It appears from the language of the restriction, including the statement "the product as claimed can be made by another and materially different process such as a heated press-fit," that the Examiner is viewing the method of claim 6 as an apparatus. This is erroneous and for this reason alone, the restriction requirement should be withdrawn.

Restriction logic is flawed.

Regardless, the Examiner's logic for making the restriction requirement is flawed. The Examiner indicates that the inventions are distinct because: "the product as claimed can be made by another and materially different process such as a heated press-fit." However, as previously pointed out in this case, each of independent claims, claims 1, 2 and 4, recite an element such as "said collar support portion including knurling and an axial stop ring." Applicant respectfully asserts that inclusion of knurling and an axial stop ring in a collar support portion of a fitting insert cannot be accomplished by heated press fitting or the like. Further, each of independent claims 1, 2 and 4 (of alleged Invention Group I) recite elements speaking to the torque communication portion being staked to provide communication with the knurling in a relatively non-rotational manner. Similarly, independent claim 6 (of alleged Invention Group II) recites "staking said collar at said torque communication portion to affix said collar upon said stem in a relatively non-rotational manner." Thus, Applicant fails to

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understand how one might employ a materially different process, such as a heated press-fitting, to make the product of claims 1-5 by another and materially different process.

Conclusion

Each of the four defects discussed above is a sufficient reason for the restriction requirement to be withdrawn. The combination of these four defects makes it clear that the present restriction requirement is improper and should be withdrawn.

Additionally, Applicant would respectfully request that the Examiner revisit Applicants assertion that the April 4, 2006 Office Action was improperly made final. As pointed out in Applicants earlier Amendment, filed October 4, 2006, the April 4, 2006 Office Action was improperly made final in light of the requirements of M.P.E.P. §706.07(a), 37 CFR § 1.142(a), and M.P.E.P. § 811. Applicant again respectfully requests that the Examiner remove the finding of finality in the April 4, 2006 Office Action and process a refund of the RCE fee filed October 4, 2006.

Applicant believes no fee is due with this response. However, if a fee is due, please charge Deposit Account No. 07-0475, from which the undersigned is authorized to draw.

Applicant respectfully requests that the Examiner call the below listed attorney if the Examiner believes the attorney can helpful in resolving any remaining issues or can otherwise be helpful in expediting prosecution of the present application.

March 19, 2007

Respectfully submitted,

Jerry L. Mahurin
Attorney for the Applicant
Reg. No. 34,661
The Gates Corporation
IP Law Department 10-A3
1551 Wewatta Street
Denver, CO 80202
(303) 744-5796

JLM
Denver, Colorado

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